

STATE OF NORTH CAROLINA
COUNTY OF ROBESON

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
15 EHR 06340

ALLEN G. DIAL,
Petitioner,

v.

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENT AND NATURAL
RESOURCES, DIVISION OF WASTE
MANAGEMENT/UST SECTION,
Respondent.

SETTLEMENT AGREEMENT

The North Carolina Department of Environmental Quality,¹ Division of Waste Management (hereafter “the Division” or “DWM”) under authority duly delegated by the Environmental Management Commission, and Allen G. Dial (hereafter “Mr. Dial”) hereby enter into this Settlement Agreement in order to resolve matters in controversy between them raised in the above-captioned Contested Case.

The parties hereby stipulate that:

A. Mr. Dial was assessed by the DWM on July 22, 2015 an administrative penalty of \$3,627.76 as follows: (1) a civil penalty in the amount of \$2,800.00 for violation of North Carolina Session Law 2010-154 from August 9, 2012 through at least July 22, 2015 for failing to comply with primary and emergency response operator requirements for four petroleum underground storage tank (“UST”) systems in accordance with procedures and requirements of the cited law; and (2) investigative and inspection costs in the amount of \$827.76 in accordance with N.C. Gen. Stat. § 143-215.3(a)(9). Mr. Dial is the owner and/or operator of four regulated

¹ The North Carolina Department of Environment and Natural Resources has been renamed the Department of Environmental Quality effective 18 September 2015.

petroleum UST systems located at Lumbee Drive Inn, 707 East 3rd Street, Pembroke, Robeson County, North Carolina 28371 (hereafter the "Site"). The UST Section Enforcement Case Number concerning this matter is UST 14-053P.

B. On August 21, 2015 Mr. Dial completed North Carolina UST Class A/B Operator Training in compliance with Carolina Session Law 2010-154.

C. The parties agree to comply with all terms of this Settlement Agreement.

NOW, IT IS THEREFORE AGREED AND CONSENTED BY THE PARTIES THAT:

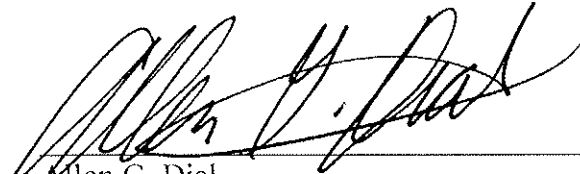
1. Mr. Dial shall pay to DWM a recomputed penalty in the amount of one hundred seventy-two dollars and twenty four cents (\$172.24). DWM agrees to accept the payment of the recomputed penalty in complete satisfaction of the original penalty, subject to the terms of this Settlement Agreement. Mr. Dial shall pay the recomputed penalty in one installment within thirty (30) days of the execution of this Settlement Agreement.
2. In accordance with N.C.G.S. § 143-215.3(a)(9), DWM also assessed costs to Mr. Dial totaling eight hundred twenty-seven dollars and seventy-six cents (\$827.76). Mr. Dial shall pay these costs to DWM in one installment within thirty (30) days of the execution of this Settlement Agreement.
3. The total payment of one thousand dollars (\$1,000.00) required under Paragraphs 2 and 3 of this Settlement Agreement shall be made by certified check or money order, payable to the North Carolina Department of Environmental Quality, and mailed to the following address:

Sharon Grady
N.C. Department of Justice
Environmental Division
Post Office Box 629
Raleigh, North Carolina 27602-0629

4. Subject to the terms of this Settlement Agreement, the Department agrees to accept the payment described in Paragraphs 2 and 3 in full and complete satisfaction of the assessed civil penalty and investigative costs described in Paragraph A.
5. The breach of any condition or compliance deadline contained in Paragraphs 2 and 3 above by Mr. Dial will render due and payable immediately, and in full, the original civil penalty that was assessed in this case. Any monies previously paid pursuant to this Settlement Agreement will be credited toward the balance owed.
6. Mr. Dial agrees that this Settlement Agreement does not waive any federal, state, or local statutes, regulations, or guidelines applicable to USTs.
7. Mr. Dial expressly agrees that by entering into this Settlement Agreement, he waives for purposes of collection of any sums due hereunder, any and all defenses to the underlying assessment of the civil penalty and that the issue in any action to collect said penalty will be limited to the payment or non-payment in the manner prescribed by this Settlement Agreement.
8. Mr. Dial agrees to file with the Office of Administrative Hearings a NOTICE OF WITHDRAWAL OF CONTESTED CASE PETITION in Allen G. Dial v. Department of Environment and Natural Resources, Division of Waste Management/UST Section, 15 EHR 6340, within ten (10) days of the execution of this Settlement Agreement.
9. Nothing in this Settlement Agreement shall restrict any right of DWM or the Department to take enforcement action against Mr. Dial for any new violation of environmental statutes or rules promulgated thereunder.
10. This Settlement Agreement contains the entire agreement between the parties as of this day and the execution hereof has not been induced by representations, promises or


understandings not expressed herein, and there are no collateral agreements, stipulations, promises or understandings whatsoever between the parties in any way touching the subject matter of this instrument which are not expressly set forth herein.

11. The above-stated stipulations set forth in Paragraphs A through C are incorporated into this Agreement by reference.


Allen G. Dial

Date: 12-14-15

FOR DEQ, DIVISION OF WASTE MANAGEMENT


Ruth Strauss
Division of Waste Management, UST Section, Permits and Inspection Branch Head

Date: 12/18/2015